

## Department of the Navy, DoD

## § 724.803

manual or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

(iv) If the applicant fails to comply with requirements in § 724.802(b)(4), the decisional document shall note the defect, and shall respond to the issue without regard to the citation.

(c) *Identification by the NDRB of issues submitted by an applicant.* The applicant's issues shall be identified in accordance with this section after a review of the materials noted under § 924.803, is made.

(1) *Issues on DD Form 293.* The NDRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorporated therein).

(2) *Amendment of issues.* The NDRB shall not request or instruct an applicant to amend or withdraw any matter submitted by the applicant. Any amendment or withdrawal of an issue by an applicant shall be confirmed in writing by the applicant. Nothing in this provision:

(i) Limits the NDRB's authority to question an applicant as to the meaning of such matter;

(ii) Precludes the NDRB from developing decisional issues based upon such questions;

(iii) Prevents the applicant from amending or withdrawing such matter any time before the NDRB closes the review process for deliberation; or

(iv) Prevents the NDRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will state that the applicant's decision to take such action (or decline to do so) will not be used against the applicant in the consideration of the case.

(3) *Additional issues identified during a hearing.* The following additional procedure shall be used during a hearing in order to promote the NDRB's understanding of an applicant's presentation. If, before closing the case for deliberation, the NDRB believes that an applicant has presented an issue not listed on DD Form 293, the NDRB may so inform the applicant, and the applicant may submit the issue in writing

or add additional written issues at that time. This does not preclude the NDRB from developing its own decisional issues.

### § 724.803 The decisional document.

A decisional document shall be prepared for each review. At a minimum, this document shall contain:

(a) The circumstances and character of the applicant's service as extracted from available service records, including health records, and information provided by other government authorities or the applicant, such as, but not limited to:

(1) Information concerning the discharge under review, including:

- (i) Date (YYMMDD) of discharge;
- (ii) Character of discharge;
- (iii) Reason for discharge;
- (iv) The specific regulatory authority under which the discharge was issued;
- (v) Date (YYMMDD) of enlistment;
- (vi) Period of enlistment;
- (vii) Age at enlistment;
- (viii) Length of service;
- (ix) Periods of unauthorized absence;
- (x) Conduct and efficiency ratings (numerical or narrative);
- (xi) Highest rank achieved;
- (xii) Awards and decorations;
- (xiii) Educational level;
- (xiv) Aptitude test scores;
- (xv) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (including nature and date (YYMMDD) of offense or punishment);
- (xvi) Convictions by court-martial;
- (xvii) Prior military service and type of discharge received.

(2) Any other matters in the applicant's record which pertains to the discharge or the issues, or provide a clearer picture of the overall quality of the applicant's service.

(b) A list of the type of documents submitted by or on behalf of the applicant (including written briefs, letters of recommendation, affidavits concerning the circumstances of the discharge, or other documentary evidence), if any.

(c) A statement whether the applicant testified, and a list of the type of witnesses, if any, who testified on behalf of the applicant.

(d) A notation whether the application pertained to the character of discharge, the reason for discharge, or both.

(e) A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and such other items submitted as issues by the applicant that are identified as inadvertently omitted. If the issues are listed verbatim on DD Form 293, a copy of the relevant portion of the form may be attached. Issues that have been withdrawn or modified with the written consent of the applicant need not be listed.

(f) The response to the items submitted as issues by the applicant.

(g) A list of decisional issues and a discussion of such issues.

(h) NDRB's conclusions on the following:

(1) Whether the character of or reason for discharge should be changed.

(2) The specific changes to be made, if any.

(i) A record of the voting, including:

(1) The number of votes for the NDRB's decision and the number of votes in the minority, if any.

(2) The NDRB members' names and votes. The copy provided to the applicant may substitute a statement that the names and votes will be made available to the applicant at the applicant's request.

(j) Advisory opinions, including those containing factual information, when such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted as issues by the applicant shall be incorporated by reference. A copy of opinions incorporated by reference shall be appended to the decision and included in the record of proceedings.

(k) The recommendation of the NDRB president when required.

(l) The addendum of the SRA when required.

(m) Index entries for each decisional issue under appropriate categories listed in the index of decisions.

(n) An authentication of the document by an appropriate official.

**§ 724.804 Decision process.**

(a) The NDRB or the NDRB panel, as appropriate, shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standard set forth in subpart I.

(b) The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the NDRB panel as appropriate and shall maintain an atmosphere of dignity and decorum at all times.

(c) Each NDRB member shall act under oath or affirmation requiring careful, objective consideration of the application. NDRB members are responsible for eliciting all facts necessary for a full and fair review. They shall consider all information presented to them by the applicant. In addition, they shall consider available military service and health records, together with other records that may be in the files of the military department concerned and relevant to the issues before the NDRB, and any other evidence obtained in accordance with this Manual.

(d) The NDRB shall identify and address issues after a review of the following material obtained and presented in accordance with this Manual and any implementing instructions of the NDRB: available official records, documentary evidence submitted by or on behalf of an applicant, presentation of a hearing examination, testimony by or on behalf of an applicant, oral or written arguments presented by or on behalf of an applicant, and any other relevant evidence.

(e) If an applicant who has requested a hearing does not respond to a notification letter or does not appear for a scheduled hearing, the NDRB may complete the review on the basis of material previously submitted and available service records.

(f) *Application of standards.* (1) When the NDRB determines that an applicant's discharge was improper, the NDRB will determine which reason for discharge should have been assigned based upon the facts and circumstances